IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

Crl.MC.No. 156 of 2004(D)

(C.C.NO.1873/2003 OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS COURT, CHANGANACHERRY)

PETITIONER: ACCUSED:

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1. MISS SALY PAUL, SUPERVISOR, M.V.J. FOODS INDIA (P)LTD., POOVANTHURUTH, KOTTAYAM DISTRICT. (KOCHUPURACKAL HOUSE, MUDAVOOR P.O., MUVATTUPUZHA).

2. SHRI. KURIAN JOHN, CHAIRMAN & MANAGING DIRECTOR, M/S. M.V.J.FOODS INIDA (P) LTD. POOVANTHURUTH, KOTTAYAM, RESIDING AT MELAMPARAMBIL, BLG.NO.XXII/27, THIRUVALLA, PATHANAMTHITTA-689 101.

3. MRS. SUJATHA KURIAN, DIRECTOR, M.V.J. FOODS INDIA (P) LTD., POOVANTHURUTH, KOTTAYAM, RESIDING AT MELAMPARAMBIL, BLG.NO.XXII/27, THIRUVALLA, PATHANAMTHITTA-689 101.

4. SHRI A.G. VIJAYACHANDRA MENON, DIRECTOR, M/S. M.V.J. FOODS INDIA (P) LTD., POOVANTHURUTHU VIHAR, DESOM, ALUVA, ERNAKULAM-683 103.

5. M/S. M.V.J. FOODS INDIA (P)LTD., POOVANTHURUTH, KOTTAYAM, BY ITS CHAIRMAN & MANAGING DIRECTOR SHRI KURIAN JOHN.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS: COMPLAINANT & STATE:

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1. THE FOOD INSPECTOR, PANACHIKKAD GRAMA PANCHAYAT, (FOOD INSPECTOR, CHANGANACHERRY CIRCLE).

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI C.M. KAMMAPPU.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.APPL. NO.742/2004 IN CRL.M.C.156/2004

DISMISSED.

14-12-2007. SD/- V.K.MOHANAN, JUDGE.

//TRUE COPY//

(C.R.)

V.K.MOHANAN, J.

Crl.M.C.N0.156 of 2004

Dated, 14th December, 2007.

ORDER

Petitioners are the accused in C.C.No.1873/2003 on the file of the Judicial First Class Magistrate Court, Changanacherry for the offences punishable under sections 16(1)(a)(i) read with section 7(i)(v), S.2(1a)(c) of the Prevention of Food Adulteration Act, 1954 and Rule 5-Appendix B of Prevention of Food Adulteration Rules 1955 (hereinafter referred to for short `the Act and Rules'). According to the Petitioners, going by Annexure-A Charge Sheet and Annexure-B Report of the Public Analyst, no offence is disclosed against them and the petitioners 1 to 3 who are the Directors of the 5th petitioner company are not liable to be prosecuted in the light of Section 17(2) of the above Act. Thus, the petitioners seek an order to quash Annexure-A complaint and all further proceedings thereon.

2. Annexure-A is the complaint filed by the Food Inspector-Ist respondent herein, in which the allegation is that

on 9-9-2002, at about 2.30 p.m. he had inspected the 5th petitioner factory, in the presence of witnesses and fully in accordance with the procedure prescribed by the law and after given notice in form No.VI to Ist accused and demanded 450 grams of Coriander, an article of human food, kept for sale in a gunny bag of 50 kg. The article so purchased was sampled as per mahazar and subsequently the same was sent to the Public Analyst, Ernakulam for report. Thereafter the complainant received Annexure-B report from the Public Analyst and according to the said report, the sample coriander does not conform to the standards prescribed for coriander under the P.F.A. Act 1955 and therefore adulterated.

3. It is further alleged that thereafter statutory formalities were adopted so as to collect the details of the licence etc. Thus according to the complainant, a letter was sent to the District Food Inspector, Kottayam requesting to intimate the nomination details of the 5th petitioner company. It is averred that the District Food Inspector, Kottayam informed the complainant that the 5th petitioner company has no valid

nomination. According to the complainant, on further enquiry, he understood that the Chairman and Managing Directors and the Directors are responsible for the day to day administration and conduct of business of the company under the provisions of the PFA Act and Rules and thus, according to the complainant, the Directors of the company were included in the array of accused. Thus, according to the complainant, accused No.1 had sold adulterated Coriander for and on behalf of accused Nos.2 to 4 to the complainant Food Inspector and therefore all are liable to be prosecuted under the provisions of the PFA Act and Rules. Thus according to the complainant, the accused have committed the offences punishable under sections 16(1)(a)(i) read with S.7(i)(v), S.2(1a)(c) of the PFA Act, 1954 and Rule 5 Appendix-B item No.A.05.08 CORIANDER (Dhania) WHOLE of PFA Rules 1955. Thus he lodged Annexure-A complaint on the basis of which the court below took cognizance and instituted C.C.813/03. The petitioner approached this Court stating that Annexure-B Report of the Public Analyst does not disclose anything to show that the food

item which subjected for chemical analysis is not in accordance with the standard prescribed as per Rules and Appendix. It is also averred that accused Nos.1 to 3 are the Directors of the 5th petitioner company and the company has already nominated petitioner No.4 in terms of Section 17(2) of the Act and therefore no prosecution can be launched against the Petitioners 1 to 3 and therefore, the very filing of the complaint itself and all proceedings thereon against the petitioners 1 to 3 will amount to abuse of process of court and therefore on that ground also they prayed to quash Annexure-A complaint.

4. I have heard the learned counsel appearing for the petitioners and also the learned Public Prosecutor.

5. The learned counsel for the petitioners submitted that the crux of the allegations against the accused/petitioners is that the coriander food item which is claimed to have purchased from the accused by the complainant and subjected for chemical analysis is seen to have been adulterated and it is further alleged that the same does not conform to the

standards fixed by the Act and Rules and the Appendix. According to the counsel, the said allegations are unsustainable. The learned counsel invited my attention to Rule 5 which says:

> *"Standards of quality of the various articles of food specified in (Appendices B,C and D to these rules are as defined in those Appendices)".*

In the present case as per Annexure A complaint, the charge is that the petitioners/accused have committed offences punishable under sections 16(1)(a)(i) read with S.7(i)(v), S.2 (1a)(c) of PFA Act 1954 and Rule 5-Appendix-B item No.A.05.08 Coriander (Dhania) whole of PFA Rules 1955. The learned counsel took me through Appendix B of the Rules with respect to item A.05.08- Coriander (Dhania) Whole which defined as:

> *"A.05.08-CORIANDER (Dhania) WHOLE means the dried mature fruits (seeds) of Coriandrum sativum L. It shall have characteristic aroma and flavour. It shall be free from mould, living and dead insects, insect*

fragments, rodent contamination. The product shall be free from added colouring matter".

Apart from the above details, it is further stated that the materials shall conform to 9 standards which are prescribed therein. The first item is shown as extraneous matter. Extraneous matter shall be not more than 1.0 per cent by weight. Similarly item No.9, insect damaged matter, should be not more than 1.0 per cent by weight. The standards are fixed in the table given thereon which contained total 9 items. But in annexure-B chemical analysis report though details are given and no reports are also shown. For example, the test report with respect to extraneous matter. What the report is that extraneous matter is present. But in the details, quantity is not given. But according to the table referred above, the quantity of extraneous matter shall not be more than 1.0 per cent by weight. So merely stating that extraneous matter present is not sufficient to come into a conclusion that it is beyond the prescribed weight. Therefore, on that ground it cannot be said whether it is adulterated or

not. Similarly, the weight of only two items are given, i.e. the first item with respect to organic matter(stalk and stem) of which weight is shown as 0.6 per cent by weight. Another item shown is Immature Coriander to which the corresponding weight shown as 1.4 per cent by weight. With respect to Inorganic matter, Insect damaged matter and Added Synthetic food colour etc., the report is that those items are absent. So, on a perusal of Annexure-B Chemical analysis report of the Public Analyst, it would show that the report does not contain the details of standards required to be shown in the chemical analysis report and in the absence of those details, it cannot be said that whether the sample item was adulterated one or whether it tallying with the standard prescribed in the Rules and Appendix. In the absence of those details in Annexure-B which are necessary to constitute the offences as alleged, there is no justification in directing the petitioners/accused to undergo the ordeal of trial. Therefore it has to be held that no offences are disclosed against the petitioners/accused.

6. Another contention raised by the counsel for the

petitioners is that in terms of section 17(2) of the Act, 4th petitioner has been duly nominated as nominee of the company and therefore petitioners 1 to 3 need not be arrayed as accused and dragged into the court proceedings. According to the complainant, the food item was purchased on 9-9-2002 and Anneuxre-A complaint is dated 8-12-2003. Annexure-C is a proceedings of the Ist respondent addressing the Director of the 5th petitioner company by which it was requested to give full details of the owner of the company, the details of the licence and also to inform whether a valid licence was available as on 9.9.2002 - the date of commission of the alleged offence. As item No.3 it was specifically directed to show the details of nomination if any made under section 17 of the PFA Act, 1954. To Annexure-C letter, Annexure-D reply was sent by the 4th petitioner, wherein all the details are furnished including the full name and address of the Director. Annexure-D(2) is a letter addressed to District Food Inspector, Ernakulam by which the nomination in terms of section 17(2) of the Act was made which would disclose that the 4th petitioner

has been nominated for and on behalf of the company for all purposes of the Act and Rules. Anneuxre-D(3)is the nomination made in Form VIII as per Rule 12-B of the Rules. Anneuxre D(3) further shows that the District Food Inspector as per his endorsement dated 26-4-2001 had accepted the nomination made by the company. Thus according to the learned counsel for the petitioners, the 4th petitioner has been duly nominated under section 17(2) to represent the company for all purpose of the Act and Rules and therefore no prosecution will lie against petitioners 1 to 3. In support of the above contention, the learned counsel placed very much reliance in the decision in **Govinda Rao v. Food Inspector (2002 (1) K.L.J. 489).** After referring several decisions including the decisions of the Apex court, this court has held:

> *"....They are not being prosecuted for the reason or on the allegation that they are in charge of and responsible to the company for the conduct of the business of the company. The person, who is nominated under sub-section(2) of Sec.17, is the person who is in charge of and responsible to the*

> *company for the conduct of the business of the company and hence, the prosecution of the nominee is for the reason that he is in charge and responsible to the company for the conduct of the business".*

It is also relevant to note that in Annexure-A complaint, there is no allegation that the alleged offence was committed with the consent or connivance of a particular Director, or Manager, Secretary or other officer of the company or on account of negligence of any one or more of them. In the present case, it is relevant to note that the company had already made a nomination under section 17(2) and therefore, when there is a nomination and the company commits an offence under the Act, the nominee has to be proceeded against, he being the person in charge of and responsible to the company for the conduct of the business. In the present case there is no averment in the complaint that the offence was committed with the consent , connivance or knowledge of the petitioners 1 to 3 as mentioned in sub-section (4) of Sec.17 of the Act.

Therefore, in the absence of material allegation with particulars, in terms of Section 17(4), Annexure-A complaint against the petitioners 1 to 3 is not sustainable.

7. In the light of the above discussion and the settled position of law as revealed from the above cited decision, I am of the view that Annexure-A complaint and the proceedings thereon are illegal and unsustainable and the same will amount to abuse of the process of the court and therefore Annexure-A complaint and all further proceedings thereon are liable to quashed.

8. In the result, annexure-A complaint and all proceedings in C.C.No.1873/2003 on the fie of the Judicial Magistrate of the First Class, Changanacherry pending against the petitioners is quashed.

The Crl.M.C. is allowed.

V.K.MOHANAN, JUDGE.

kvm/-

V.K.MOHANAN, J.

CRL.M.C.No.156 OF 2004

Order

Dated:14-12-2007